

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking and Interim)	WC Docket No. _____
Relief to Allow Lifeline Subscribers to)	
Establish Usage of Lifeline Service by)	
Sending Text Messages)	
)	
Lifeline and Link Up Reform)	WC Docket No. 11-42
And Modernization)	

**INITIAL COMMENTS OF NALA ON TRACFONE'S
PETITION FOR RULEMAKING AND FOR INTERIM RELIEF**

The National ALEC Association/Prepaid Communications Association (hereafter "NALA") is a Lifeline advocacy group whose mission is to support the providers of essential communication services through education, cooperation, and advocacy. NALA is the only industry trade group specifically focused on the Lifeline segment of telecommunications. Its members include ETCs, distributors, suppliers, interested individuals, and the recipients of Lifeline services. Working with all segments of the industry, NALA envisions that every person in America will have access to essential communication services.

NALA provides the following comments in support of the Petition of TracFone Wireless, Inc. ("TracFone") for Rulemaking and Interim Relief to Allow Lifeline Subscribers to Establish Usage of Lifeline Service by Sending Text Messages and reserves the opportunity to provide reply comments on issues it does not address in these initial comments. NALA urges the Federal Communications Commission (Commission) to grant TracFone's Petition. Allowing text messages to establish usage would align the usage rule with current subscriber usage trends and other Lifeline rules. Additionally, it would ensure that Lifeline subscribers who are deaf, hard of

hearing, or who have trouble with speech would be able to maintain access to much needed communications tools. Lastly, allowing Lifeline subscribers to establish usage of Lifeline service by sending and receiving text messages would not open the program to additional waste, fraud, and abuse, because the same protections and requirements used for establishing usage through voice would apply and continue to be effective.

Text is the New Voice

Universal Service is based on the principle stated in the Communications Act of 1934 that all Americans should have affordable access to communications services.¹ The FCC's universal service policies must be based on access to advanced telecommunications and information services, among other principles.² Universal service is statutorily defined as "an evolving level of telecommunications services," that takes into account "advances in telecommunications and information technologies and services."³

These principles of universal service incorporating evolving technology have endured through many revisions of universal service laws. In 1985, Congress amended universal service statutes in an effort to protect low-income consumers' access to certain services that the Commission had found to be "crucial to full participation in our society and economy[,] which are increasingly dependent upon the rapid exchange of information."⁴ At no point has the USF's low-income program's purpose been guided by a specific technology; rather, it has been

¹ 47 U.S.C. § 151 (creating the Federal Communications Commission).

² 47 USC 254 (b)(2).

³ 47 USC 254 (c)(1).

⁴ *Id.* at 942, para. 11. ("We adopt the Joint Board's recommendation concerning measures to offset the effect of subscriber line charges on low income houses. In this regard, we agree with their conclusion that the proposed subscriber line charges should not have an adverse effect on universal service.").

consistently guided by the importance that all Americans have access to the same communications tools, because those tools facilitate public health, safety, and even prosperity.⁵

Text messaging is increasingly becoming the preferred method of communication for Americans. Many NALA members have noticed that Lifeline subscribers increasingly use more text messages than voice minutes. This anecdotal evidence is supported by research studies. The Pew Research Internet Project has summarized Americans' use of text messaging as follows:

Some 83% of American adults own cell phones and three-quarters of them (73%) send and receive text messages. The Pew Research Center's Internet & American Life Project asked those texters in a survey how they prefer to be contacted on their cell phone and 31% said they preferred texts to talking on the phone, while 53% said they preferred a voice call to a text message.⁶

The Commission has not had to require that carriers provide Lifeline subscribers access to text messaging, because competition and cultural changes have encouraged the inclusion of text messaging into Lifeline plans without the need for Commission action. Now, carriers ask only that the Commission recognize that text messaging is already incorporated into the Lifeline world and allow the use of text messages to constitute usage with respect to the "usage rule." This rule amendment would be consistent with the current Lifeline environment, as well as the current usage trends among Lifeline subscribers.

Consistency with Other Lifeline Rules

In the Commission's 2012 Lifeline Reform Order,⁷ the Commission followed the universal service principles regarding evolving technology by incorporating text messaging into

⁵ 47 USC 254 (c)(1)(A) and (D).

⁶ Smith, Aaron, "Americans and Texting," Report of the Pew Internet and American Life Project (2011) available at <http://www.pewinternet.org/2011/09/19/how-americans-use-text-messaging/> (last visited November 12, 2014).

⁷ *Lifeline and Link Up Reform and Modernization* et al., WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (FCC rel. Feb. 6, 2012) ("Lifeline Reform Order").

certain subscriber requirements.⁸ Specifically, annual recertifications of subscriber eligibility may be obtained through text messages.⁹ All ETCs may “verify the ongoing eligibility of their Lifeline subscriber base,” to the satisfaction of FCC requirements, via text message.¹⁰ The Commission reasoning included consideration that initial eligibility verification requirements provide enough security that via text message suffice for purposes of recurring annual recertifications.¹¹

Similarly, each Lifeline subscriber is initially required to activate service before an ETC can request reimbursement for the line.¹² This activation can be completed “by whatever means specified by the carrier.”¹³ Because initial usage requirements include an activation requirement that an ETC must approve, recurring usage requirements to satisfy the 60-day usage rule should be allowed to be made through text message. As with annual re-certifications, no security is lost in this way.

Accessibility for Persons with Disabilities

Text messaging has been a phenomenal development in improving access to telephone services for persons who have difficulty with hearing and speech. According to one international advocacy group for persons with auditory and verbal disabilities, “The *most crucial function* that a cell phone serves for the hearing impaired and the deaf community is to allow them to

⁸ *Id.* at ¶ 2 (“promote the availability of modern networks and the capability of all American consumers to access and use those networks,”) and ¶ 5 (“Ensuring the availability of communications services for low-income households”).

⁹ *Id.* at ¶¶ 111, 130, and 168 (“We also determine for purposes of annual certifications, ETCs may rely upon text messages from Lifeline consumers when such communications is received in response to the annual certification request from the consumer’s Lifeline-supported phone number.”).

¹⁰ *Id.* at ¶ 130.

¹¹ *Id.* at ¶ 134.

¹² 47 CFR 54.407(c)(1).

¹³ *Id.*

contact people in the form of text messages, either SMS (short messaging service), email or MMS (multimedia messaging service), thus offering an alternative to verbal communication.”¹⁴

Individuals who are hard of hearing, deaf, and/or have difficulty with speech cannot establish usage through means that require hearing and/or speaking. The United States Access Board, which provides guidelines for communications carriers’ compliance with Section 255 of the Telecommunications Act, which governs Telecommunications Access for People with Disabilities,¹⁵ has recommended that both input and output functions on communications devices should be, “locatable, identifiable, and accurately operable without requiring the user to hear.”¹⁶ Federal regulations agree that in order to be accessible to persons with difficulty with hearing and/or speech, communications services must “provide at least one mode that does not require speech,”¹⁷ and “at least one mode that does not require user auditory perception.”¹⁸ All parts of Lifeline service should be similarly accessible to persons with auditory or verbal disabilities.

The Commission has addressed this matter with respect to accessibility to 911 services. In its 2011 Text-to-911 Notice of Proposed Rulemaking, the Commission recognized the power of text messaging to improve accessibility of traditionally-telephone-based services for persons with disabilities.¹⁹ “In recent years, people with hearing and speech disabilities have increasingly

¹⁴ “Making mobile phones and services accessible for persons with disabilities,” a joint report of ITU (International Telecommunication Union) and G3ict (global initiative for inclusive ICTs), August 2012; can be found at http://www.itu.int/ITU-D/sis/PwDs/Documents/Mobile_Report.pdf (last visited November 11, 2014) (emphasis supplied).

¹⁵ 47 USC § 255.

¹⁶ Access to Telecommunications Equipment and Customer Premises Equipment by Individuals with Disabilities, Telecommunications Access Advisory Committee (TAAC) Final Report, Chapter 5 (January 1997); accessible at <http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-telecommunications-act-guidelines/background/taac-final-report> (last visited November 11, 2014).

¹⁷ Telecommunications Act Section 255 Accessibility Guidelines 36 CFR § 1193.41(h)

¹⁸ Telecommunications Act Section 255 Accessibility Guidelines 36 CFR § 1193.41(e)

¹⁹ *In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications and Framework for Next Generation Deployment*, PS Docket No. 11-153, PS Docket No. 10-255, Notice of Proposed Rulemaking ¶ 36 (Sept. 22, 2011).

migrated away from specialized legacy devices such as TTYs and towards more widely available forms of text communications because of the ease of access, availability, and practicability of text-capable communications devices.”²⁰ The same accessibility needs apply to Lifeline subscribers’ ability to keep their service active by establishing usage via text messaging.

Lifeline is available to persons who are enrolled in Supplemental Security Income Benefits and Medicaid, among others. These programs assist, in part, persons with disabilities, including those with hearing and speech disabilities. If a person can qualify to receive Lifeline benefits because of a disability, the Lifeline rules should accommodate the disability as well. All parts of participation in the program should be accessible, including the capacity to show continued usage and to maintain benefits. No person who has difficulty with speech or hearing should lose access to one of her or his few means of communicating long-distance simply because usage rules require a fully able body. For this reason, Rule 54.407(c)(2) should be amended to allow Lifeline subscribers to establish usage of Lifeline service by sending and receiving text messages.

Waste, Fraud, and Abuse

There is no security against waste, fraud, and abuse within the Lifeline program that would be lost through the proposed amendment. The usage requirement was implemented “in order to ensure that Lifeline support benefits only eligible low-income subscribers actually using the supported service.”²¹ The requirement was intended to address the concern that an ETC “can claim support for all subscribers without confirming that the person is still in possession of and is

²⁰ *Id.*

²¹ Lifeline Reform Order ¶ 257.

using the phone.”²² Text messaging has as much ability to confirm that a subscriber is still in possession of and using the phone as do the other methods of showing usage listed in Rule 54.407(c)(2).²³ Additionally, appropriate limitations, paralleling those relating to phone calls, could be placed on the text messaging usage establishment. For example, just as an incoming voice call from the ETC would not suffice to establish usage, neither would an incoming text from the eligible telecommunications carrier or the ETC’s agent or representative.²⁴ However, an outgoing text message in response to direct contact from the ETC confirming continued usage would establish usage, just as “Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving the Lifeline service,” establishes usage.²⁵

Conclusion

Therefore, NALA supports TracFone’s Petition for Rulemaking to allow Lifeline subscribers to establish usage through text messaging. Such a rule amendment would comport with the evolving telecommunications culture and technology. It would also be consistent with other Lifeline rules allowing eligibility to be re-certified through text message. Allowing the transmission of text messages to establish usage would improve the Lifeline program’s accessibility to persons who are deaf, hard of hearing, or have difficulty with speech. Lastly, there is no concern that allowing Lifeline subscribers to establish usage through text messaging would increase the risk of waste, fraud, and abuse in the program, especially if appropriate

²² Id.; Government Accountability Office, Report to Congressional Requesters, GAO 11-11, Telecommunications: Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program, page 36 (2010) (2010 GAO Report);

²³ 47 CFR 54.407(c)(2): “(i) Completion of an outbound call; (ii) Purchase of minutes from the eligible telecommunications carrier to add to the subscriber’s service plan; (iii) Answering an incoming call from a party other than the eligible telecommunications carrier or the eligible telecommunications carrier’s agent or representative; or (iv) Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving the Lifeline service.”

²⁴ 47 CFR 54.407 (i).

²⁵ 47 CFR 54.407 (iv).

limitations are incorporated into the amended rule. The Commission should grant TracFone's petition.

Respectfully submitted,

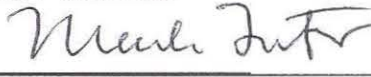
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